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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ABANTE ROOTER AND PLUMBING,
INC., MARK HANKINS, and PHILIP J.
CHARVAT, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ALARM.COM INCORPORATED, and
ALARM.COM HOLDINGS, INC.,

Defendants.

NO. 4:15-cv-06314-YGR

**DECLARATION OF BETH E.
TERRELL IN SUPPORT OF
PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND CROSS-
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

JURY TRIAL DEMAND

Complaint Filed: December 30, 2015

Honorable Yvonne Gonzalez Rogers

DATE: July 24, 2018

TIME: 2:00 p.m.

LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

I, Beth E. Terrell, declare as follows:

1. I am a member of the law firm Terrell Marshall Law Group PLLC ("TMLG"),
counsel of record for Plaintiffs in this case. I am a member in good standing of the bars of the
states of California and Washington. I respectfully submit this declaration in support of

DECLARATION OF BETH E. TERRELL IN SUPPORT OF PLAINTIFFS'
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

CASE No. 4:15-cv-06314-YGR

1 Plaintiffs' Response to Defendants' Motion for Summary Judgment and Cross-Motion for Partial
2 Summary Judgment. Except as otherwise noted, I have personal knowledge of the facts set forth
3 in this declaration. If called to testify as to the contents of this declaration, I could and would
4 competently do so.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Alarm.com Dealer
6 Agreement executed between Alarm.com and VMS Alarms that was produced by Defendants in
7 this matter under Bates Nos. ALARM-0000005-ALARM-0000019. Defendants have designated
8 this exhibit "Confidential." Plaintiffs are therefore filing it under seal in compliance with the
9 Stipulated Protective Order (Dkt. No. 55).

10 3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the
11 Deposition of Matthew Pits, taken on December 8, 2017.

12 4. Attached hereto as **Exhibit 3** is a true and correct copy of an Alliance Security,
13 Inc. "Schedule of Protection" contract and Alarm.com "Alarm Monitoring Agreement" that
14 Plaintiff Charvat received at his home from Joe Wyche of Alliance Security on September 9,
15 2015.

16 5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the
17 Deposition of Anne Ferguson, taken on October 27, 2016.

18 6. Attached hereto as **Exhibit 5** is a true and correct copy of a document titled
19 "Alarm.com The Leader in Connected Services" that was produced by Defendants in this matter
20 under Bates Nos. ALARM-0016621-ALARM-0016682.

21 7. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the
22 deposition of Allen J. Gollinger, taken in this matter on October 28, 2016.

1 8. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the
2 Deposition of Stephen Scott Trundle, taken on February 15, 2017.

3 9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the
4 Deposition of Steve Kaufer, dated March 8, 2018.

5 10. Attached hereto as **Exhibit 9** is a true and correct copy of email correspondence
6 between Nate Natale, Allison Morris, Shawn Barry, Marten Hebert, and Andy Feldman, dated
7 July 22-28, 2014, and containing the subject line "Account Update," produced by Defendants
8 under Bates Nos. ALARM-0005867–ALARM-0005869.

9 11. Attached hereto as **Exhibit 10** is a true and correct copy of a document titled
10 "Dealer Sales and Marketing Program Customer Lifecycle" that was produced by Defendants in
11 this matter under Bates Nos. ALARM-0010773-0010837.

12 12. Attached hereto as **Exhibit 11** is a true and correct copy of a document titled
13 "Marketing Development Fund (MDF) Overview" that was produced by Defendants in this
14 matter under Bates Number ALARM-0000282.

15 13. Attached hereto as **Exhibit 12** is a true and correct copy of the transcript of a
16 Today Show segment titled "Rossen Reports: Telemarketers ignore Do Not Call list." This
17 document was marked as Exhibit 17 during the deposition of Donald Natale, taken in this matter
18 on October 27, 2016.

19 14. Attached hereto as **Exhibit 13** is a true and correct copy of email correspondence
20 between Nate Natale and Steve Trundle, dated May 1, 2012, and containing the subject line
21 "VMS/Today Show" that was produced by Defendants under Bates No. ALARM-0001252.

1 15. Attached hereto as **Exhibit 14** is a true and correct copy of a June 23, 2010 article
2 written by Aaron T. Evans and posted on Gant Daily: A CNN Affiliate titled “Three Businesses
3 Fined for ‘Do Not Call’ Violations.”

4 16. Attached hereto as **Exhibit 15** is a true and correct copy of a January 4, 2012
5 press release from the Kentucky Office of the Attorney General titled “Attorney General
6 Conway Announces Recover from Marketing Company over Violations to Kentucky’s No Call
7 Law.” Available online at <http://migration.kentucky.gov/Newsroom/ag/vmsrecovery.htm> (last
8 visited May 22, 2018).

9 17. Attached hereto as **Exhibit 16** is a true and correct copy of the Class Action
10 Complaint filed by Diana Mey in the *Diana Mey v. Monitronics International Inc., et al.*; No.
11 11-C-143 (Circuit Court of Ohio County, State of West Virginia).

12 18. Attached hereto as **Exhibit 17** is a true and correct copy of the Summary Order
13 Following Hearing (ECF No. 127) from *Mey v. Monitronics International, Inc., et al.*, C11-
14 00090 (N.D.W. Va. May 11, 2012), ECF No. 127.

15 19. Attached hereto as **Exhibit 18** is a true and correct copy of the First Amended
16 Class Action Complaint (ECF No. 13) filed by Diana Mey in *Mey v. Monitronics International,*
17 *Inc., et al.*, C11-00090 (N.D.W. Va. July 15, 2011).

18 20. Attached hereto as **Exhibit 19** is a true and correct copy of the Second Amended
19 Class Action Complaint (ECF No. 100) filed by Diana Mey in *Mey v. Monitronics International,*
20 *Inc., et al.*, C11-00090 (N.D.W. Va. February 16, 2012).

21 21. Attached hereto as **Exhibit 20** is a true and correct copy of the Stipulated Final
22 Order for Permanent Injunction and Civil Penalty Judgment (ECF No. 2-1) filed in *United States*
23 *of America v. Versatile Marketing Solutions, Inc., et al.*, C14-10612 (D. Mass. March 10, 2014).

22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the Deposition of Donald Natale, taken on October 27, 2016.

23. Attached hereto as **Exhibit 22** is a true and correct copy of the call notes taken by Plaintiff Charvat in connection with the November 14, 2017, call made on behalf of Alliance. This document was produced by Plaintiffs in this matter under Bates number PL_CHARVAT_002004.

24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from the Deposition of Joseph Colosimo, taken on February 27, 2018.

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the Deposition of Jeffrey Zwirn, taken on March 29, 2018.

26. Attached hereto as **Exhibit 25** is a true and correct copy of the Expert Report of Joseph Colosimo, dated January 5, 2018.

27. Attached hereto as **Exhibit 26** is a true and correct copy of email correspondence dated February 7, 2018 between Jeffrey Zwirn and Mike Hampton regarding the applicability of the ESA's Code of Ethics to associate members. This document was produced by Mr. Zwirn in this matter under Bates numbers ZWIRN_000045–ZWIRN_000046.

28. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the Deposition of Joseph Moretti, taken on December 7, 2017.

29. Attached hereto as **Exhibit 28** is a true and correct copy of the Declaration of Randall A. Snyder Regarding Effect of ACA International on His Expert Opinions, dated May 22, 2018.

30. Attached hereto as **Exhibit 29** is a true and correct copy of email correspondence between Nate Natale and Martin Hebert, dated August 21-23, 2015, and containing the subject

1 line “RE: Movers Issue Comp Report,” produced by Defendants under Bates Nos. ALARM-
2 0005347–ALARM-0005349.

3 31. Attached hereto as **Exhibit 30** is a true and correct copy of the PACER Case
4 Locator Party Search Results for Alliance Security, Inc., last accessed on May 11, 2018.

5 32. Attached hereto as **Exhibit 31** is a true and correct copy of the 1st Amendment to
6 the Alarm.com Dealer Agreement Between Alarm.com Incorporated and Alliance Security,
7 dated March 12, 2015. This document was produced by Defendants under Bates Nos. ALARM-
8 0005483-ALARM-0005486. Defendants have designated this exhibit “Confidential.” Plaintiffs
9 are therefore filing it under seal in compliance with the Stipulated Protective Order (Dkt. No.
10 55).

11 33. Attached hereto as **Exhibit 32** is a true and correct copy of a June 2, 2014 email
12 from Nate Natale to Jay Gotra and Brian Fabiano transmitting an article called 5 TCPA
13 Marketing Obstacles. This document was produced by Defendants in this matter under Bates No.
14 ALARM-0000696.

15 34. Attached hereto as **Exhibit 33** is a true and correct copy of a May 22, 2018
16 Memorandum Opinion and Order from *Swaney v. Regions Bank*, No. 2:13-cv-00544-JHE (N.D.
17 Ala. May 22, 2018).

18 35. Attached hereto to as **Exhibit 34** is a true and correct copy of a document titled
19 “Customer Lead Service – Lead Handling Guidelines & Best Practices” that was produced by
20 Defendants in this matter under Bates Nos. ALARM-0000020-ALARM-0000024. Defendants
21 have designated this exhibit “Confidential.” Plaintiffs are therefore filing it under seal in
22 compliance with the Stipulated Protective Order (Dkt. No. 55).

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 EXECUTED in Seattle, Washington, this 22nd day of May, 2018.

4
5 /s/ Beth E. Terrell, SBN #178181
6 Beth E. Terrell, SBN #178181
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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on May 22, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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1 DATED this 22nd day of May, 2018.

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